

Kenchava Kom Sanyellappa Hosmani and Another - - - Appellants  
v.  
Girimallappa Channappa Somasagar - - - Respondent

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF JUDICIAL COMMITTEE OF THE PRIVY  
COUNCIL, DELIVERED THE 19TH JUNE, 1924.

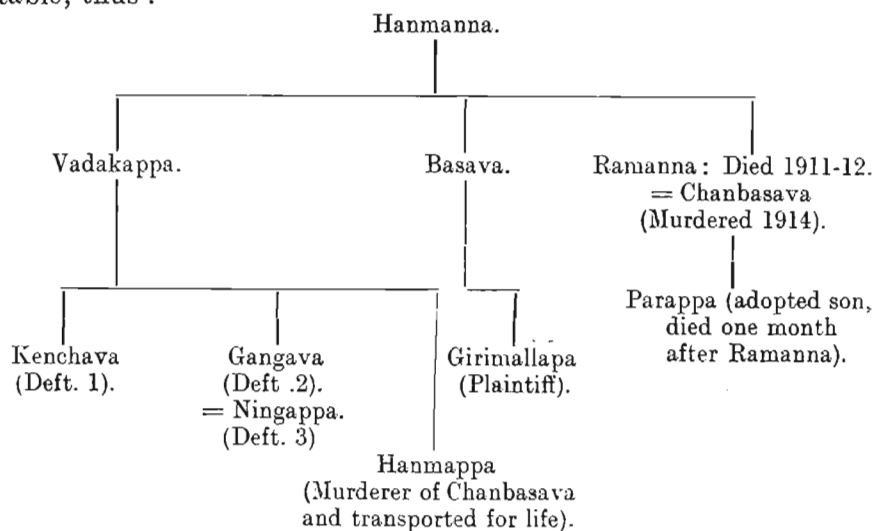
*Present at the Hearing :*

LORD DUNEDIN.  
LORD PHILLIMORE.  
LORD CARSON.  
SIR JOHN EDGE.

[*Delivered by* LORD PHILLIMORE.]

This case involves some questions of importance. The parties are all relations, descendants of one Hanmanna. He had three children—a daughter, Basava, whose son Girimallappa Channappa Somasagar is the plaintiff and present respondent; a son Vadakappa who had two daughters, Kenchava and Gangava—who are the defendants and present appellants—and a son Hanmappa—of whom more hereafter. The third child of Hanmanna was another son, Ramanna since deceased. Ramanna married Chanbasava; they had no children, but they adopted as a son, Parappa. He died a month after Ramanna. Thereupon, his adoptive mother Chanbasava succeeded to the property for the ordinary Hindu woman's estate, and upon her death, descent would have to be traced to Parappa as the propositus; and Hanmappa if he survived Chanbasava would be the natural heir to Parappa.

The relationships can be illustrated on a genealogical table, thus:—



In 1914, Hanmappa had a quarrel with his aunt Chanbasava and murdered her. He was tried and sentenced to transportation for life. The matter to be determined in this case is who, in these circumstances—the Hindu woman's estate of Chanbasava having been brought to an end—is to succeed as heir to Parappa's property.

The defendants, Kenchava and Gangava, the daughters of Parappa's uncle, obtained possession. Thereupon, the plaintiff, as son of Parappa's aunt, sued claiming to have a better title. The defendants being in possession—while averring their better title—also rely as they are entitled to do, upon the contention that the real title is in or through the murderer Hanmappa.

The case therefore raises three questions—

Can the murderer succeed ?

If not, can title be claimed through him ?

If not,—and he is to be wiped out altogether—who are the heirs of Parappa ?

And to this last question there are three possible answers : The three cousins may be entitled equally ; or the daughters of the uncle may succeed alone ; or the son of the aunt may succeed alone.

As to the first two questions the Subordinate Judge held that the matter was provided for by Hindu law, and that this law disqualified a murderer from succeeding to an estate, the succession to which he had accelerated by killing the woman who had a previous interest during her life. But in compliance as he considered with a decision of the High Court of Madras, he held that nevertheless the murderer did take the legal estate, though he was disqualified from having any beneficial interest. He further held that this disqualification was not confined to a personal disqualification of the murderer, but wiped him out from the line of descent, so that the heirship to the propositus Parappa is to be traced directly and not through him.

The High Court came to the same conclusions, that is to say that the murderer had no title, and that the heirship was not to be traced through him, but on a somewhat different line of reasoning. The learned Judges thought that there was no Hindu law which governed the matter, so that they had to have recourse in obedience to the Bombay Regulation of 1827, No. 4, section 26, to the principles of equity, justice and good conscience. And while thinking it immaterial whether the murderer had the legal estate vested in him or not because " in either case he must for the purpose of the inheritance be treated as if he were dead when the inheritance opened and as not being a fresh stock of descent," they thought it " simpler to say that the exclusion extends to the legal as well as beneficial estate."

Before this Board, it has been contended that the matter is governed by Hindu law, and that the Hindu law makes no provision disqualifying a murderer from succeeding to the estate of his victim and therefore it must be taken that according to this law he can succeed, and he being alive, the plaintiff has no title.

Their Lordships do not take this view. There is much to be said for the argument of the Subordinate Judge that the principles of jurisprudence which can be traced in Hindu law, would warrant an inference that according to that law a man cannot take advantage of his own wrong, and that if this case had come under consideration by the Hindu sages they would have determined it against the murderer. But it is unnecessary so to decide, because the alternative is between the Hindu law being as above stated or being for this purpose non-existent, and in this latter case the High Court have rightly decided that the principles of equity, justice and good conscience exclude the murderer.

The English law on this subject is based upon principle and is well settled. It is true that the reported decisions have been in cases where the murderer was a devisee or legatee under the will of the murdered person, and that Joyce J. in *Re Houghton* (1915 2 Ch. 173) thought it a matter for consideration whether the same rule would apply in the case of an intestacy, and cited a decision of a Court in the U.S.A. by which it was held that the provisions of the Statute of Distributions were paramount and forbade the consideration of any disqualification. But the actual decision of Joyce J. was rested upon another ground and a quite satisfactory one; and their Lordships are unable to follow the reasoning of the learned American judge. Statutes regulating heirship or descent, or giving force to wills and to the devises contained in wills should be read as not intended to affect paramount questions of public policy or depart from well-settled principles of jurisprudence.

In their Lordships' view it was rightly held by the two Courts below that the murderer was disqualified; and with regard to the question whether he is disqualified wholly or only as to the beneficial interest which the Subordinate Judge discussed, founding upon the distinction between the beneficial and legal estate which was made by the Subordinate Judge and by the High Court of Madras in the case of *Vedanayaga Mudaliar v. Vedammal* (I.L.R. 27 Madras, page 591), their Lordships reject, as did the High Court here, any such distinction. The theory of legal and equitable estates is no part of Hindu law and should not be introduced into discussion.

The second question to be decided is whether title can be claimed through the murderer. If this were so, the defendants as the murderer's sisters, would take precedence of the plaintiff, his cousin. In this matter also, their Lordships are of opinion that the Courts below were right. The murderer should be treated as non-existent and not as one who forms the stock for a fresh line of descent. It may be pointed out that this view was also taken in the Madras case just cited.

It was contended that a different ruling was to be extracted from the decision of the Bombay High Court in *Gangu v. Chandrabhagabai* (I.L.R. 32 Bombay, page 275). This is not so. In that case, the wife of a murderer was held entitled to succeed to the

estate of the murdered man ; but that was not because the wife deduced title through her husband, but because of the principle of Hindu family law that a wife becomes a member of her husband's gotra, an actual relation of her husband's relations in her own right, as it is called in Hindu law a gotraja-sapinda. The decision therefore has no bearing on the present case.

It remains to be determined whether as between the appellants and the respondent—all three being first cousins of the propositus—any distinction is to be made by reason of their sex or the sex of their parents. The Subordinate Judge thought that there was no distinction to be made between bandhus of equal nearness, and that all took equally, and so he gave to the plaintiff a third of the property.

Both parties appealed to the High Court, which held that as between bandhus of equal nearness to the propositus, male members of the family were preferred to female, and gave judgment that the plaintiff should take the whole.

The case against this decision has been very fully argued before their Lordships by counsel for the defendants—appellants. He brought a number of authorities before their Lordships for review, all of which have been considered.

In the result, however, for the purposes of this case, the matter can be brought into a short compass. Both the Subordinate Judge and the High Court agreed—indeed the Subordinate Judge said it was conceded in argument on both sides—that the plaintiff and the defendants are bandhus (bhinna gotra sapindas) of an equal degree being sapindas within four degrees of the common ancestor. This being so, no reason is shown in their Lordships' opinion why the defendants as daughters of the deceased father's brother should take in preference to the plaintiff who is the son of the deceased father's sister. So far again, both Courts are in agreement, and their Lordships are in agreement with both Courts. That leaves to be determined the point on which the two Courts differ, the Subordinate Judge having held that all three should share alike, and the High Court having given preference to the plaintiff as being a male.

Now it was decided by the High Court of Madras in 1889, in the case of *Narasimma v. Mangammal* (I.L.R. 13 Madras p. 10) that a father's sister was postponed to a mother's brother by reason of the general preference given among bandhus to male over female heirs. This decision was quoted without disapproval by their Lordships on this Board in the case of *Vedachela Mudalliar v. Subramania Mudalliar* (48 I.A. at p. 360).

But the High Court of Bombay in 1902 in the case of *Saguna v. Sadashiv* (I.L.R. 26 Bombay 710) came to the conclusion that however this might be in Madras it was different in Bombay. The Judges gave preference to the father's half-sister over the mother's brother, and did not follow the case of *Narasimma v. Mangammal* which was quoted to them. And it was upon this decision of the High Court of Bombay that the main argument of counsel for the appellants was founded.

When analysed, however, the decision of the Bombay Court comes to this only. There may or may not be a preference among bandhus of males over females, if they are otherwise in the same position, but there is a prior and paramount enquiry whether they are bandhus on the father's side or on the mother's side—those on the father's side having the precedence.

The question of priority as between atma bandhus *ex parte paterna* and those *ex parte materna* has been the subject of much discussion—the latest word on the subject being found in *Vedachela Mudaliar v. Subramania Mudaliar* (48 I.A. page 349) which decided in 1921, that as between pitrubandhus and matru bandhus, the preference given to the former is settled.

The case now before their Lordships is not affected however by these considerations, as both sets of claimants are related on the father's side.

In 1908, the High Court of Madras in *Rajah Venkata Narashima v. Rajah Surenani* (I.L.R. 31 Madras page 321) again decided that in that Presidency a male bandhu is entitled to preference over a female bandhu, even though the latter is nearer in degree. *Saguna v. Sadashiv* was not referred to in the judgment, but it was unnecessary because there was no contest between maternal and paternal bandhus.

Then in *Balkrishna v. Ramkrishna* (I.L.R. 45 Bombay, page 353 ; decided in 1920 by the High Court of Bombay—consisting of the same Judges who decided the case now under appeal) the authority of *Rajah Venkata Narashima v. Raja Surenani* was followed. The principle that among bandhus the male is entitled to preference over the female—even though the latter is nearer in degree—was accepted as being law for the Bombay Presidency as much as for the Madras Presidency ; and preference was given to a mother's sister's son over a brother's daughter. In that particular case the actual decision would appear to conflict with *Saguna v. Sadashiv*, because it apparently ignored the supposed prior and paramount claim of paternal over maternal bandhus ; and it would seem that for some unaccountable reason, *Saguna v. Sadashiv* was not cited to the Court. Whenever therefore the two conflicting principles of preference of the paternal over the maternal line and preference of the male over the female sex, in the Presidency of Bombay, have to be weighed, the Court which weighs them will have to choose between these two decisions of the High Court.

But it will be seen from this summary that there is no case in the Bombay Presidency which decides that some preference is not to be given to male bandhus over female. And there is no doubt, indeed the learned counsel for the appellants did not contend that there was any doubt, that throughout the rest of India, preference for the male would be certain.

This being so, their Lordships are of opinion that the case was rightly decided by the High Court of Bombay, and that this appeal should be dismissed, and they will humbly advise His Majesty accordingly.

In the Privy Council.

---

KENCHAVA KOM SANVELLAPPA HOSMANI AND  
ANOTHER

v.

GIRIMALLAPPA CHANNAPPA SOMASAGAR.

---

DELIVERED BY LORD PHILLIMORE.

Printed by  
Harrison & Sons, Ltd., St. Martin's Lane, W.C. 2.

1924.